

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GUS BETHEA,

Petitioner,

ORDER

09-CV-5037 (NGG)

-against-

JAMES WALSH,

Respondent.

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NICHOLAS G. GARAUFIS, United States District Judge.

On November 9, 2009, Petitioner Gus Bethea (“Bethea”) filed a petition for a writ of habeas corpus, challenging his convictions for first-degree robbery in New York Supreme Court, Kings County. (Docket Entry # 1.) On January 5, 2010, Bethea moved the New York Supreme Court to vacate his conviction under N.Y. Crim. Proc. Law § 440.10. (See Docket Entry # 15.) On June 21, 2010, Bethea moved this court to amend his habeas petition. (Docket Entry # 8.) The court granted Bethea’s motion on January 13, 2011. (Docket Entry # 13.) On January 14, 2011, the court ordered Respondent to respond to Bethea’s Petition within twenty-one days, and to provide the court with a status update of the concurrent state proceedings. (Docket Entry # 14.) On January 21, 2011, Respondent informed the court that, on January 10, 2011, New York Supreme Court, Kings County “ordered a hearing only with respect to the issue of whether defense counsel was ineffective for failing to investigate and proffer an alibi defense.” (Docket Entry # 15.) Because Bethea’s Amended Petition raised this “unexhausted” claim, Respondent further asked the court to stay the proceedings pursuant to Zarvela v. Artuz, 254 F.3d 374 (2d Cir. 2001) (holding that the District Court erred by not staying petitioner’s petition for a writ of habeas corpus that contained unexhausted, state-law claims).

Accordingly, the court now orders a stay of the proceedings so that Bethea may exhaust his ineffective assistance claim in state court. Pursuant to Zarvela, the court conditions the stay on the return of these proceedings to this court within thirty days of the exhaustion of Bethea's ineffective assistance claim in state court. See 254 F.3d at 381-82.

SO ORDERED.

s/Nicholas G. Garaufis

Dated: Brooklyn, New York
January 26, 2011

NICHOLAS G. GARAUFIS ✓
United States District Judge